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FILED

08 MAR 10 PM 1:47

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

5 Attorney and Plaintiff Pro Se
6
7

8 UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
10

11 JEFFREY A. NEEDELMAN,
12 Plaintiff,
13

14 vs.

15 PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AUTHORITY dba AMERICAN
16 EDUCATION SERVICES; KEY BANK, N.A.;
& EDUCATION CREDIT MANAGEMENT
SERVICES;
17

18 Defendants.
19
20

CASE NO.

08 CV U442 L RBB

COMPLAINT FOR:

1. DECLARATORY RELIEF; AND
2. REIMBURSEMENT

21 FIRST CAUSE OF ACTION

22 FOR DECLARATORY RELIEF
23

24 Plaintiff Jeffrey A. Needelman alleges as follows:
25

- 26 1. Plaintiff was and is at all relevant times an individual is an individual United States
27 Citizen who is a resident, domiciliary and citizen of the State of California.
28

(Complaint)

CR

1 2. Plaintiff is informed and believes and on that basis alleges that defendant
2 Pennsylvania Higher Education Authority ("PHEAA") doing business as American Education
3 Services ("AES") is a corporation incorporated under the laws of Pennsylvania or a business entity
4 organized under the laws of the State of Pennsylvania with its principal place of business in the
5 State of Pennsylvania, and a Citizen of Pennsylvania.

6
7 3. Plaintiff is informed and believes and on that basis alleges that defendant Key
8 Bank, N.A. is a corporation incorporated under the laws of Pennsylvania or a business entity
9 organized under the laws of the State of Pennsylvania with its principal place of business in the
10 State of Pennsylvania, and a Citizen of Pennsylvania.

11
12 4. Plaintiff is informed and believes and on that basis alleges that defendant Education
13 Credit Management Services ("ECMC") is a nonprofit member of ECMC Group and is a national
14 guaranty agency that insures loans under the Federal Family Education Loan (FFEL) Program.

15
16 5. This Court has jurisdiction to adjudicate this lawsuit pursuant to 28 U.S.C. § 1331
17 because the case involves a controversy arising under the laws of the United States.

18
19 6. Venue in the Southern District of California is proper because the underlying events
20 on which this lawsuit is based occurred in the Southern District of California; to wit, the plaintiff's
21 filing of a Chapter 13 case in the Southern District with the intent to have his student loans
22 forgiven and his fulfillment of a 5-year plan toward that end.

23
24 7. The PHEAA dba AES, Key Bank, ECMC or their predecessors issued, owned,
25 guaranteed, purchased or serviced 7 federally guaranteed Stafford student loans ("the Student
26 Loans") to plaintiff while he was in law school on the following disbursement dates: August 4,
27 1993, December 22, 1993, August 19, 1994, September 20, 1995, September 20, 1995, August 28,
28 1996, and August 28, 1996. Plaintiff graduated law school in 1997 and began making payments

on some or all of the Student Loans in 1998 until receiving a deferment or forbearance in the year 2000.

8. On December 6, 2001, Plaintiff filed a Chapter 13 bankruptcy in the United States District Court for the Southern District of California, Case No. 01-12461-H13. The bankruptcy included only student loan debts, including the Student Loans, and no other debts. A five-year plan was confirmed after notice to all lenders without objection on January 25, 2002. Under the plan, the plaintiff was to pay \$29,197.11 to satisfy the total student loan obligations in the amount of \$104,275.35, with the balance of the amount to be forgiven. The plan was concluded on March 9, 2007. After notice to all lenders without objection, an order discharging the debtor was executed on May 29, 2004.

9 The student loans issued, owned, guaranteed, purchased or serviced by PHEAA dba AES, Key Bank and ECMC, or their predecessors (collectively hereafter "defendants") were originally claimed and paid in the following amounts in Plaintiff's Chapter 13 bankruptcy:

<u>DISBURSEMENT</u>	<u>AMOUNT OF CLAIM</u>	<u>AMOUNT PAID</u>
<u>DATE</u>	<u>CLAIM IN BANKRUPTCY</u>	<u>IN BANKRUPTCY</u>
08/04/1993	\$9,826.76	\$2,751.49
12/22/1993	\$1,310.17	\$366.85
08/19/1994	\$11,058.38	\$3,096.35
09/20/1995	\$11,058.38	\$3,096.35
09/20/1995	\$15,580.22	\$4,362.46

1 08/28/1996 \$11,058.38 \$3,096.35

2

3 08/28/1996 \$14,561.74 \$4,077.29

4

5 Thus, of the total amount claimed to be owed to defendants at the commencement of Plaintiff's
6 plan of \$74,454.03, Plaintiff agreed to pay, and did pay, \$20,847.14 over a five year period.

7

8 10. In a letter dated July 12, 2007, defendant PHEAA dba AES wrote the Plaintiff,
9 stating that the above 7 loans had been repurchased by defendant Key Bank N.A. in the following
10 amounts:

11

12	<u>LOAN</u>	<u>1ST DISB</u>	<u>PRINCIPAL</u>	<u>LOAN</u>
13	<u>PROGRAM</u>	<u>DATE</u>	<u>BALANCE</u>	<u>STATUS</u>
14	STFFRD	08/04/1993	\$10,144.62	REPAYMENT
15				
16	STFFRD	12/22/1993	\$1,354.17	REPAYMENT
17				
18	STFFRD	08/19/1994	\$11,414.30	REPAYMENT
19				
20	STFFRD	09/20/1995	\$11,414.30	REPAYMENT
21				
22	UNSTFD	09/20/1995	\$16,080.46	REPAYMENT
23				
24	STFFRD	08/28/1996	\$11,414.30	REPAYMENT
25				
26	UNSTFD	08/28/1996	\$15,028.82	REPAYMENT

27

28 The combined amount of the letter stated that I owed \$76,850.97, an amount higher than the

1 \$74,454.03 owed before the commencement of the 5-year plan.

2
3 11. Plaintiff disputed this result in letters to defendant PHEAA dba AES dated July 23,
4 2007, August 27, 2007, and September 14, 2007.

5
6 12. On September 27, 2007, Plaintiff received a letter from defendant ECMC, advising
7 that it considered the Student Loans with interest still owing during the period of the 5-year plan.

8
9 13. On October 17, 2007, Plaintiff received a letter from "PHEAA powered by AES,"
10 stating that student loan debts are non-dischargeable without an adversary proceeding instituted by
11 the debtor. The letter warned, "Inasmuch as interest continues to accrue on the outstanding
12 principal, it is in your best interest, to make payments in accordance with the terms of the
13 promissory note(s)."

14
15 14. To avoid assessment of interest, late penalties and creditor harassment, Plaintiff in
16 October of 2007 began making monthly payments on these loans in the amount of \$971.01, as
17 demanded in monthly letters from PHEAA dba AES.

18
19 15. An actual controversy has arisen and now exists between Plaintiff and defendants
20 regarding their respective rights and duties in connection with the Student Loans. Plaintiff
21 contends (1) the failure of defendants or their predecessors to object to the plan at its confirmation
22 hearing after notice; (2) the acceptance of defendants or their predecessors of monthly payments
23 over five years without reserving rights; and (3) the failure of defendants or their predecessors to
24 object to the termination of the plan constituted an acceptance of, and a waiver of any objections
25 to, the plan's terms and conditions, including no accrual of interest during the pendency of the plan
26 and / or forgiveness of any outstanding principal after completion of the plan.

27
28 16. A judicial determination is now necessary in order to determine whether Plaintiff

1 owes any money to defendants and whether Plaintiff is entitled to reimbursement of loan payments
2 made since October of 2007.

3
4 SECOND CAUSE OF ACTION
5 FOR REIMBURSEMENT
6

7 17. Plaintiff incorporates by this reference each of the above allegations.
8

9 18. The failure of defendants to object to the plan at its confirmation hearing after
10 notice; the acceptance of defendants of monthly payments over five years without reserving rights;
11 and the failure of defendants or their predecessors to object to the termination of plaintiff's
12 Chapter 13 plan constituted an acceptance of, and a waiver of any objections to, the plan's terms
13 and conditions, including no accrual of interest on the Student Loans during the pendency of the
14 plan and forgiveness of any outstanding principal after completion of the plan.
15

16 19. Defendants have received and have been unjustly enriched by Plaintiff's monthly
17 payments on the Student Loans in the amount of \$971.01 since October of 2007.
18

19 WHEREFORE, Plaintiff seeks judgment in his favor and against defendants:
20

21 1. Pursuant to the first cause of action, for a declaration that the order of discharge
22 dated May 24, 2007 in Plaintiff's Chapter 13 bankruptcy in the United States District Court for the
23 Southern District of California, Case No. 01-12461-H13, applies to the Student Loans,
24 extinguishing, forgiving and forever discharging the Student Loans and that, therefore, Plaintiff is
25 no longer obligated to pay any money to defendants arising from the Student Loans.
26

27 2. Alternatively, pursuant to the first cause of action, for a declaration that, during the
28 pendency of the 5-year plan in Plaintiff's Chapter 13 bankruptcy in the United States District

1 Court for the Southern District of California, Case No. 01-12461-H13, interest on the Student
2 Loans' principal was stayed and should not have accrued and that, therefore, Plaintiff is entitled to
3 a credit against the principal claimed at the commencement of the 5-year plan of \$74,454.03 in the
4 amount of the \$20,847.14 paid to defendants during the plan.

5
6 3. Pursuant to the second cause of action, for reimbursement, with prejudice and
7 post-judgment interest, of the monthly payments Plaintiff has made on the aforementioned student
8 loan debts since October of 2007 in the amount of \$971.01;

9
10 4. Alternatively, pursuant to the second cause of action, for reimbursement and re-
11 allocation toward principle of the portion of the payments Plaintiff has made on the
12 aforementioned student loan debts since October of 2007 in the amount of \$971.01 misapplied
13 toward interest;

14
15 5. For costs of suit; and

16
17 6. For all other relief as the Court deems proper.

18
19 DATED: March 9, 2008

JEFFREY A. NEEDELMAN

20
21 By: 

Jeffrey A. Needelman,
Attorney and Plaintiff Pro Se

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 148583 - SH
* * C O P Y * *
March 10, 2008
13:52:18**

Civ Fil Non-Pris

USAO #.: 08CV0442

Judge.: M. JAMES LORENZ

Amount.: \$350.00 CC

Total-> \$350.00

FROM: NEEDELMAN V. PHEAA ET AL

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jeffrey A. Needelman

(b) County of Residence of First Listed Plaintiff San Francisco
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

P.O. Box 471146; San Francisco, California 94147-1146

DEFENDANTS

PHEAA dba AES; Key Bank, N.A.; ECMC

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
 11 U.S.C.A. §§ 502(b)(2), 523(a)(8), 1328(a)(2)

Brief description of cause:
 Declaratory Judgment Plaintiff Owes No Principal or interest after confirmation and completion of Ch. 13. plan

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Hargrove

DOCKET NUMBER 01-12461-H13

DATE

03/09/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

148583

AMOUNT

#350

APPLYING IFP

JUDGE

MAG. JUDGE